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Sotomayor Senate Questionnaire

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Sonia Sotomayor -- October 1983 to the Present.

**Sonia Sotomayor de Noonan, Sonia Maria Sotomayor de Noonan,
or Sonia Noonan, Married Names -- August 1976 to October 1983.
As part of my divorce decree, I resumed my maiden name without my
middle name.**

Sonia Maria Sotomayor -- Birth to Marriage, August 1976.

2. Address: List current place of residence and office address(es).

RESIDENCE:

New York, New York

OFFICE:

**U.S. Courthouse
500 Pearl Street, Room 1340
New York, New York 10007**

3. Date and place of birth.

**June 25, 1954
New York, New York**

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

**Divorced since October 1983. Engaged to be married to Peter White,
President of Commercial Residential and Industrial Construction
Corporation, 656 Central Park Avenue, Yonkers, New York 10704.**

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5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

<u>SCHOOL</u>	<u>DEGREE</u>	<u>DATES ATTENDED</u>	<u>GRADUATION</u>
Yale Law School	J.D.	1976 - 1979	June 1979
Princeton University	A.B., <i>Summa Cum Laude</i>	1972 - 1976	June 1976

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

<u>ORGANIZATION</u>	<u>ADDRESS</u>	<u>DATES OF ASSOCIATION</u>	<u>POSITION</u>
United States District Court - Southern District of New York	U.S. Courthouse 500 Pearl Street New York, NY 10007	10/92 to present	Judge
Pavia & Harcourt	600 Madison Ave. New York, NY 10022	1/88 to 10/92 4/84 to 12/87	Partner Associate
New York County District Attorney's Office	1 Hogan Place New York, NY 10013	8/79 to 3/84	Assistant District Attorney in Trial Bureau 50
Sotomayor & Associates	10 3rd Street Brooklyn, NY 11231	1983 - 1986	Counseling and consulting work for family and friends
Yale Law School Mimeo Room	127 Wall Street New Haven, CT 06520	9/78 to 5/79	Sales person
Paul, Weiss, Rifkind Wharton & Garrison	1285 Avenue of the Americas New York, NY 10019	6/78 to 8/78	Summer Associate

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The Graduate, Professional Student Center	306 York Street New Haven, CT 06520	9/77 to 5/78	Sales person
Office of the General Counsel, Yale University	Woodbridge Hall New Haven, CT 06520	6/77 to 9/77	Summer Intern
The Equitable Life Assurance Society of the United States	1285 Avenue of the Americas New York, NY 10019	6/76 to 8/76	Summer Clerk
New York City Campaign Finance	40 Rector Street New York, NY 10006	1988 to 10/92	Member, Board of Directors
State of New York Mortgage Agency	260 Madison Avenue New York, NY 10016	1987 to 10/92	Member, Board of Directors
Puerto Rican Legal Defense & Education Fund	99 Hudson Street New York, NY 10013	1980 to 10/92	Member, Board of Directors
Maternity Center Association	48 East 92nd Street New York, NY 10128	1985 - 1986	Member, Board of Directors

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I received financial assistance in the form of scholarships during my four years at Princeton University and my three years at Yale Law School. I graduated *summa cum laude*, Phi Beta Kappa, from Princeton. Princeton awarded me, as a graduating student co-winner, the M. Taylor Senior Pyne Prize, for scholastic excellence and service to the University. My senior thesis work received an honorable mention from the University's History Department.

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While at law school, I served as an Editor of the Yale Law Journal and Managing Editor of the Yale Studies in World Public Order. I was also a semi-finalist in the Barrister's Union competition, a mock trial presentation.

In reverse chronological order, I have received the following awards:

**Secretary of State of Puerto Rico
July 4, 1996
Award as Distinguished Woman in the Field of Jurisprudence**

**Latino American Law Student Association
of Hofstra University School of Law
March 15, 1996
Award in Recognition of Outstanding Achievement
and Dedication to the Latino Community**

**District Attorney - New York County
January 17, 1995
Award for Outstanding and Dedicated Service
to the People of New York County from 8-13-79 to 3-16-84**

**National Puerto Rican Coalition, Inc.
October 20, 1994
Lifetime Achievement Award**

**National Conference of Puerto Rican Woman
New York City Chapter
March 24, 1994
Certificate of Excellence in Grateful Recognition of
Outstanding Achievements and Contributions to the Community**

**Cardinal Spellman High School
Honors Night 1993
Excellence with a Heart Medal**

**Hispanic National Bar Association
Law Student Division
September 25, 1993
Lifetime Achievement Award**

**Hispanic National Bar Association
September 24, 1993
Award for Commitment to the Preservation of Civil
and Constitutional Rights for all Americans**

**Bronx Community College
of the City University of New York
Paralegal Studies
June 17, 1993
Human Rights Award for Service to Humanity**

**John Jay College of Criminal Justice
May 27, 1993
Claude E. Hawley Medal for Scholarship and Service**

**The Puerto Rican Bar Association, Inc.
1993
Emilio Nunez Award for Judicial Service**

9. Bar Association: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

**Member, Budget Committee of the Southern District of New York
("S.D.N.Y."), 1996 to present.**

Member, Pro Se Committee of the S.D.N.Y., 1996 to present.

Member, Puerto Rican Bar Association, 1994 to present.

**Honorary Member, Public Service Committee of the Federal Bar Council,
1994 to the present.**

**Member, Second Circuit Task Force on Gender, Racial, & Ethnic Fairness,
1993 to present (Preliminary Draft Report Attached).**

**Member, Committee on Rules of Practice and Procedure of the S.D.N.Y.,
1993 to present.**

Member, Grievance Committee of the S.D.N.Y, 1992 to present.

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Member, Hispanic National Bar Association, 1992 to present.

Member, American Bar Association, 1980 to present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapsed membership. Give the same information for administrative bodies which require special admission to practice.

United States District Court, Eastern District of New York -- March 30, 1984.

United States District Court, Southern District of New York -- March 27, 1984.

New York -- First Department -- April 7, 1980.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Note, Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights, 88 Yale L.J. 825 (1979) (copy attached).

Sonia Sotomayor & Nicole A. Gordon, Returning Majesty To The Law and Politics: A Modern Approach, 30 Suffolk U.L. Rev. 35 (1996) (copy attached).

The speeches I have given, in reverse chronological order, are as follows:

Sonia Sotomayor, *The Genesis and Need of an Ethnic Identity*, Keynote Speech at Princeton University's Latino Heritage Month Celebration (Nov. 7, 1996).

Sonia Sotomayor, *El Orgullo y La Responsabilidad de Ser Latino y Latina*, Keynote Speech for the National Board of Governor's Reception of the Hispanic National Bar Association held at the Association of the Bar of the City of New York (May 17, 1996).

Sonia Sotomayor, *El Orgullo y La Responsabilidad de Ser Latino y Latina*, Speech at the Third Annual Awards Banquet and Dinner Dance for the Latino and Latina American Law Students Association of Hofstra University School of Law (Mar. 15, 1996).

Sonia Sotomayor, Hogan-Morgenthau Award Address (Jan. 17, 1995).

Sonia Sotomayor, *A Judge's Guide to More Effective Advocacy*, Keynote Speech at the 40th National Law Review Conference (Mar. 19, 1994).

Sonia Sotomayor, *Women in the Judiciary*, Panel Presentation at the 40th National Conference of Law Reviews (Mar. 17, 1994).

Sonia Sotomayor, *Doing What's Right: Ethical Questions for Private Practitioners Who Have Done or Will Do Public Service*, Presiskel/Silverman Speech at the Yale Law School (Nov. 12, 1993).

The drafts of these speeches are attached. I am unaware of any press reports about any of my speeches. I am aware of one press report of a panel presentation of which I was member, Edward A. Adams, *Women Litigators Discuss Battling Bias in Courtroom*, N.Y. Law Journal, April 2, 1993, at 1. This press report is also attached.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. Please note, I am a juvenile diabetic (insulin dependent since age 7). My condition is permanent and subject to continuing treatment. It does not impair my work or personal life. My last physical examination was January 1997.

14. Judicial Office: State (chronologically) any judicial office you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Appointed by President George W. Bush as a United States District Court Judge for the Southern District of New York. I commenced service on October 2, 1992. The United States District Court for the Southern District of New York includes the counties of the Bronx, Dutchess, New York, Orange, Putnam, Rockland, Sullivan, and Westchester, and, concurrently with the Eastern District of New York, the waters within the Eastern District. The jurisdiction of United States District Courts is limited to those matters permitted by Article III, Section 2 of the United States Constitution.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticisms of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) The following, in reverse chronological order, are ten of my most significant opinions, with citations.

1. United States v. The Spy Factory, Inc., 951 F. Supp. 450 (S.D.N.Y. 1997).
2. Krueger Int'l v. Nightingale, Inc., 915 F. Supp. 595 (S.D.N.Y. 1996).
3. United States v. Lech, 895 F. Supp. 586 (S.D.N.Y. 1995).
4. Refac Int'l, Ltd. v. Lotus Development Corp., 887 F. Supp. 539 (S.D.N.Y. 1995), aff'd, 81 F.3d 1576 (Fed. Cir. 1996).
5. Silverman v. Major League Baseball Player Relations Committee, 880 F. Supp. 246 (S.D.N.Y.), aff'd, 67 F.3d 1054 (2d Cir. 1995).
6. Modeste v. Local 1199, Drug, Hospital & Health Care Employees Union, 850 F. Supp. 1156 (S.D.N.Y.), aff'd, 38 F.3d 626 (1994).
7. United States v. Hendrickson, 26 F.3d 321 (2d Cir. 1994) (sitting by designation).

8. Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994).
9. Azurite Corp., Ltd. v. Amster & Co., 844 F. Supp. 929 (S.D.N.Y. 1994), aff'd, 52 F.3d 15 (2d. Cir. 1995).
10. Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993).

(2) The following, in reverse chronological order, is a short summary of and citations for all appellate opinions where my decisions were reversed or where my judgments were affirmed with significant criticisms of my substantive or procedural rulings.

1. Hellenic American Neighborhood Action Committee v. City of New York, 933 F. Supp. 286 (S.D.N.Y.), rev'd, 101 F.3d 877 (2d Cir. 1996).

I granted a preliminary injunction on behalf of a contractor which alleged that it was barred from city procurements in violation of its due process rights under the Fourteenth Amendment. The Second Circuit reversed without addressing whether the City's alleged misconduct deprived plaintiff of protected property and liberty interests. The Court reasoned that even if there was such a deprivation, there was no failure of due process because there was an adequate remedy available to the contractor under state law.

2. Aurora Maritime Co., Ltd. v. Abdullah Mohamed Fahem & Co., 890 F. Supp. 322 (S.D.N.Y. 1995), aff'd on other grounds, 85 F.3d 44 (2d Cir. 1996).

The Second Circuit affirmed my decision denying a bank's motion to vacate various Supplemental Admiralty Rule B attachments of plaintiff's bank account. I held that "because plaintiffs obtained Rule B attachments before [the bank] exercised its set-off rights . . . plaintiffs gained a limited property interest under federal law that cannot be defeated by a subsequently executed state law set-off right." Although upholding my ruling, the Second Circuit disagreed with my conclusion "that [the bank's] set-off right and appellees' Rule B attachments d[id] not conflict." Instead, the Second Circuit reached the constitutional issue and found that the dismissal was proper because federal law preempted the bank's right, under Section 151 of state law, to the funds in the disputed account.

3. **European American Bank v. Benedict**, 1995 WL 422089 (S.D.N.Y. 1995), **vacated**, 90 F.3d 50 (2d Cir. 1996).

I affirmed a Bankruptcy Court decision rescinding its prior order which had extended the time period for a creditor to file a dischargeability complaint. I reasoned that the Bankruptcy Court did not have the discretion, under the applicable statute of limitations, to extend the time for filing a complaint, and that the Bankruptcy Court was therefore correct when it reversed its initial decision to do so. Recognizing a split of authority on the issue, the Second Circuit determined that the applicable limitations period under the Federal Bankruptcy Rules is not jurisdictional, and that it is therefore subject to waiver, estoppel, and equitable tolling. The Court proceeded to enforce the Bankruptcy Court's initial decision to extend the period for filing, because the debtor had waived its right to object to the extension by failing to raise that objection prior to the expiration of the statutory deadline.

4. **Bernard v. Las Americas Communications, Inc.**, (no written opinion), **aff'd in part, vacated in part**, 84 F.3d 103 (2d Cir. 1996).

Pursuant to a jury verdict, I entered judgment in favor of plaintiff, an attorney, seeking legal fees in connection with his representation of defendant in proceedings before the Federal Communications Commission. Applying Washington, D.C. law, the Second Circuit approved of my jury instructions on the issues of proximate causation and damages, but found error with respect to my instruction on materiality. Specifically, I had instructed that a material breach "defeats the purpose of [an] entire transaction"; the Second Circuit held that D.C. law requires only that defendant prove that he received "something substantially less or different from that for which he bargained." On remand, a jury again found for plaintiff, and judgment was entered accordingly.

5. Bolt Electric, Inc. v. City of New York, 1994 WL 97048 (S.D.N.Y. 1994), rev'd, 53 F.3d 465 (2d Cir. 1995).

I granted a motion to dismiss on behalf of the City of New York (the "City") in a breach of contract action brought by plaintiff Bolt Electric, Inc. ("Bolt"). I found that because the City had undertaken to pay Bolt for general contracting services pursuant to a letter which was not filed and endorsed by the City's Comptroller, as required under New York's Administrative Code, the contract was unenforceable. The Second Circuit reversed, reasoning that compliance with the endorsement provision of the Administrative Code was not a mandatory precondition to the formation of a valid contract. In the alternative, the Court reasoned that, even if the contract was executed without proper authority, it was enforceable because the City had funds available for performance.

6. Runquist v. Delta Capital Management, L.P., 1994 WL 62965 (S.D.N.Y.), rev'd, 48 F.3d 1212 (2d Cir. 1994).

The Second Circuit reversed a decision in which I adopted a Magistrate Judge's recommendation that plaintiff's claims of securities fraud be dismissed. Before the Magistrate Judge, plaintiff failed to file a timely opposition to defendant's motion for summary judgment, and subsequently filed an affidavit which the Magistrate Judge found insufficient to raise a triable issue of fact as to the element of reliance in plaintiff's fraud claim. The Second Circuit found, however, that the affidavit was sufficient to raise an issue of material fact, and that it was error for me to have dismissed plaintiff's remaining claims on the basis of his attorney's repeated noncompliance with applicable filing procedures and deadlines.

(3) The following, in reverse chronological order, are citations for my significant opinions on federal or state constitutional issues, together with citations to appellate court rulings on such opinions.

1. Estate of Joseph Re v. Kornstein, Veisz & Wexler, 958 F. Supp. 907 (S.D.N.Y. 1997).

2. United States v. The Spy Factory et al., 951 F. Supp. 450 (S.D.N.Y. 1997).
3. National Helicopter Corp. of America v. City of New York, 952 F. Supp. 1011 (S.D.N.Y. 1997).
4. United States v. Ni Fa Yi, 951 F. Supp. 42 (S.D.N.Y. 1997).
5. Gelb v. Board of Elections, 950 F. Supp. 82 (S.D.N.Y. 1996).
6. United States of America, Louis Menchaca, 96 Civ. 5305, decision unpublished, read into the record on August 26, 1996.
7. Hellenic American Neighborhood Action Committee v. City of New York, 933 F. Supp. 286 (S.D.N.Y. 1996), rev'd, 101 F.3d 877 (2d Cir. 1996).
8. In re St. Johnsbury Trucking Co., Inc., 191 B.R. 22 (S.D.N.Y. 1996); 199 B.R. 84 (S.D.N.Y. 1996).
9. United States v. Jimenez, 921 F. Supp. 1054 (S.D.N.Y. 1995).
10. Lee v. Coughlin, 902 F. Supp. 424 (S.D.N.Y. 1995), reconsideration granted, 914 F. Supp. 1004 (S.D.N.Y. 1996).
11. Ortiz v. United States, 1995 WL 130516 (S.D.N.Y. 1995), aff'd, 104 F.3d 349 (2d Cir. 1996).
12. Senape v. Constantino, 1995 WL 29502 (S.D.N.Y. 1995), aff'd, 99 F.3d 401 (2d Cir. 1995).
13. Clapp v. LeBoeuf, Lamb, Leiby & MacRae, 862 F. Supp. 1050 (S.D.N.Y. 1994), aff'd, 54 F.3d 765 (2d Cir.), cert. denied, 116 S. Ct. 380 (1995).
14. Campos v. Coughlin, 854 F. Supp. 194 (S.D.N.Y. 1994) (cited with approval in Jolly v. Coughlin, 76 F.3d 468 (2d Cir. 1996)).

15. Flamer v. City of White Plains, 841 F. Supp. 1365 (S.D.N.Y. 1993).

16. United States v. Castellanos, 820 F. Supp. 80 (S.D.N.Y. 1993).

Copies of opinions not officially published are attached.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

1988 to 1992 -- Board of Directors, New York City Campaign Finance Board, appointed by the Mayor.

1987 to 1992 -- Board of Directors, State of New York Mortgage Agency, appointed by the Governor.

1979 to 1984 -- Assistant District Attorney, New York County, appointed by the District Attorney.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

Yes, with Sotomayor & Associates, 10 3rd Street, Brooklyn, New York, 11231, from 1983 to 1986, but this work was more in the nature of a consultant to family and friends in their real estate, business, and estate planning decisions. If their circumstances required formal legal representation, I referred the matter to my firm, Pavia & Harcourt, or to others with appropriate expertise.

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3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

<u>Dates of Association</u>	<u>Organization</u>	<u>Address</u>	<u>Position</u>
4/84 to 10/92	Pavia & Harcourt	600 Madison Ave. New York, NY 10022	Partner (1/88 to 10/92) Associate
8/79 to 3/84	New York County District Attorney's Office	1 Hogan Place New York, NY 10013	Assistant District Attorney

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

See I(b)(2) below.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

From April 1984 as an associate, and from January 1988 until October 1992 as a partner, I was a general civil litigator involved in all facets of commercial work including, but not limited to, real estate, employment, banking, contract, distribution and agency law. Moreover, my practice had significant concentration in intellectual property law involving trademark, copyright and unfair competition issues. I also worked in automobile franchise law, and export commodity trading law under the North American Grain Association Contract. I conducted over fifteen arbitration hearings involving the banking, fashion, grain, and tire distribution industries. My typical clients were significant European companies doing business in the United States.

From August 1979 to March 1984, as a prosecutor in New York County, my cases typically involved "street crimes," i.e., murders, robberies, etc. I also investigated child pornography, child abuse, police misconduct, and fraud matters. I further prepared the responsive papers for five criminal appeals, two of which I argued and all of which resulted in affirmances of the convictions.

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- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared daily in court as a prosecutor and I appeared regularly in court as a civil commercial litigator in New York with a largely federal practice.

2. What percentage of these appearances was in:

	<u>In private practice</u>	<u>As a prosecutor</u>
1. federal courts	approx. 70%	0%
2. state courts of record	approx. 20%	100%
3. other courts	approx. 10%	0%

3. What percentage of your litigation was:

	<u>In private practice</u>	<u>As a prosecutor</u>
(a) civil	99%	0%
(b) criminal	1%	100%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried over 23 cases to verdict. In two of the cases, I was chief counsel and in another, co-counsel. In all other cases, I was sole counsel.

5. What percentage of these trials was:

1. Jury -- 90%
2. Non-jury -- 10%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I list the ten litigated matters in reverse chronological order.

1.

Case Name: Fratelli Lozza (USA) Inc. v. Lozza (USA) & Lozza SpA

Court: United States District Court, Southern District of New York

Index No.: 90 Civ. 4170

Judge: Then District Court Judge Fred I. Parker (sitting by designation)
Federal Building
11 Elmwood Avenue
P.O. Box 392
Burlington, Vermont 05402
(802) 951-6401

Date of Trial: March 16, 1992

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Co-Counsel: Allison C. Collard, Esq.
Attorney for co-defendant Lozza (USA)
1077 Northern Blvd.
Roslyn, New York 11576
(516) 365-9802

Adversaries: Charles E. Temko
Temko & Temko
19 West 44th Street
New York, New York 10036
(212) 840-2178

Case Description: I represented the defendant Lozza SpA in this trademark infringement, trademark abandonment, unfair competition, breach of contract, and rescission action. The plaintiff, a corporation owned and operated by a former shareholder of the defendant corporation, claimed the defendant had breached an agreement with the plaintiff for the trademark use of "Lozza" in the United States, had abandoned use of its marks in the United States, and had infringed certain of the plaintiff's trademarks. I conducted the trial for the lead defendant, and secured a dismissal of all of the plaintiff's claims. The Court also issued an injunction against the plaintiff's use of the defendants' marks, and of false and misleading terms in its advertising. Findings of Fact, Conclusions of Law and Order reported at 789 F. Supp. 625 (S.D.N.Y. 1992).

2.

Administrative

Case Name: **Ferrari of Sacramento, Inc. v. Ferrari North America**

Agency: State of California New Motor Vehicle Board
(Appeared pro hac vice)

Protest No.: PR-973-88

Administrative

Law Judges: Marilyn Wong
c/o New Motor Vehicle Board
1507 21st Street, Room 330
Sacramento, California 95814
(916) 445-1888

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Robert S. Kendell (retired)
Contact: Michael Sabian
c/o New Motor Vehicle Board
1507 21st Street, Room 330
Sacramento, California 95814
(916) 445-1888

Dates of Hearing: 10/16/90, 10/17/90, 10/31/90, 11/1/90, and 11/2/90

Co-Counsel: Nicholas Browning, III, Esq.
Herzfeld & Rubin
1925 Century Park East, Suite 600
Los Angeles, California 90067-2783
(310) 553-0451

Adversaries: Jay-Allen Eisen
Jay-Allen Eisen Law Corporation
9A0 9th Street, Suite 1400
Sacramento, California 95814
(916) 444-6171

Donald M. Licker, Esq.
2443 Fair Oaks Boulevard
Room 340
Sacramento, California 95825
(916) 924-6600

Case Description: In or about 1988, Ferrari North America ("Ferrari") terminated the plaintiff dealer. Thereafter, the dealer filed a timely protest of the termination with the California New Motor Vehicle Board (the "Board"). At a prehearing settlement conference, Ferrari and the dealer entered into a Stipulated Settlement that permitted Ferrari to terminate the dealer, without a hearing, if the dealer failed timely to cure specified obligations under its franchise agreement with Ferrari. When the dealer breached the terms of the Stipulated Settlement, Ferrari terminated the dealer, with the Board's approval and without a hearing. The dealer then secured a writ of mandate from a California court directing the Board to hold an administrative hearing.

I had primary responsibility for representing Ferrari at the administrative hearing. The Board determined that 1) the dealer had violated the terms of

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the Stipulated Settlement, 2) the violations constituted good cause for Ferrari's termination of the dealer under California's Automobile Franchise Law, and 3) the plaintiff's loss of its franchise was not an illegal forfeiture under California law.

While the hearing before the Board proceeded after issuance of the mandate, Ferrari also appealed the judgment on the writ, which judgment was reversed on appeal in an unpublished opinion. The California Court of Appeals, Third Appellate District, determined that enforcing the Stipulated Settlement and terminating the dealer, without a hearing, did not violate due process.

Although not listed as counsel for appellant's briefs, I contributed significantly to the drafting of the briefs. The appellate case was captioned Ferrari of Sacramento, Inc., Respondent v. New Motor Vehicle Board and Sam Jennings as Secretary, Appellants, and Ferrari North America, Real Party in Interest and Appellant; No. C008840 in the Court of Appeals of the State of California in and for the 3rd Appellate District; Sacramento Superior Court, Case No. 360734.

3.

Case Name: **In re: Van Ness Auto Plaza, Inc., a California Corporation, d/b/a Auto Plaza Lincoln Mercury, Auto Plaza Porsche and Auto Plaza Ferrari, Debtors.**

Court: United States Bankruptcy Court, Northern District of California
(Appeared pro hac vice)

Case No.: 3-89-03450-TC

Judge: Hon. Thomas E. Carlson
U.S. Bankruptcy Court Judge
235 Pine Street
San Francisco, California 94104
(415) 705-3200

Dates of Hearing: 1/22/90 and 3/19/90

Co-Counsel: Nicholas Browning, III, Esq.
Herzfeld & Rubin
1925 Century Park East, Suite 600
Los Angeles, California 90067-2783
(213) 553-0451

Adversaries: Henry Cohen, Esq.
Cohen and Jacobson
Attorneys for Debtor
577 Airport Blvd., Suite 230
Burlington, California 90067-2783
(415) 342-6601

William Kelly, Esq. (retired)
Address Unknown
Home Tel. No. (415) 641-1544

Case Description: I represented Ferrari North America ("Ferrari"), a franchisor of a bankrupt dealer, in hearings related to Ferrari's opposition to the rejection of customer contracts, assumption of the dealer's franchise agreement, and confirmation of the proposed sale of the dealer's franchise. At the time, Ferrari was introducing a limited production and valuable new car model to the marketplace. A rejection by the dealer of contracts for that model would have frustrated the expectations of customers and subjected Ferrari to potential multiple claims. After a number of hearings, the Bankruptcy Court ruled that the dealer could not reject the customer contracts, although financially burdensome, and then assume the franchise agreement with Ferrari. The case also involved alleged claims by the dealer and customers that Ferrari had violated the California automobile franchise, antitrust, and securities laws. The case settled with the sale of the dealership and resolution of claims among the bankrupt dealer, the new franchise buyer, Ferrari, and customers.

4.

Case Name: Fendi S.a.s. di Paola Fendi e Sorelle v. Burlington Coat Factory Warehouse Corp., et al.

Case No.: 86 Civ. 0671

Court: United States District Court, Southern District of New York

Sotomayor Senate Questionnaire

Judge: Hon. Leonard B. Sand
U.S. District Judge
U.S. Courthouse
500 Pearl Street
New York, New York 10007
(212) 805-0244

Co-Counsel: Frances B. Bernstein, Esq.
(Deceased)

Adversaries: Stacy J. Haigney, Esq.
Herbert S. Kasner, Esq.
Attorneys for Burlington Coat Factory Warehouse and
Monroe G. Milstein
Burlington Coat Factory Warehouse, Corp.
263 West 38th Street
New York, New York 10018
(212) 221-0010

Dennis C. Kreiger, Esq.
Esanu, Katsky, Korins & Sieger
Attorneys for Firestone Mills, Inc. and Leo Freund
605 Third Avenue, 16th Floor
New York, New York 10158
(212) 953-6000

Dates of Trial: 5/18/87 to 5/19/87

Case Description: Combined Case Description in 5 below.

5.

Case Name: **Fendi S.a.s. di Paola Fendi e Sorelle v. Cosmetic World, Ltd., Loradan Imports, Inc., Linea Prima, Inc. a/k/a Lina Garbo Shoes, Daniel Bensoul, Michael Bensoul a/k/a Nathan Bendel, Paolo Vincelli and Mario Vincelli**

Case No.: 85 Civ. 9666

Court: United States District Court, Southern District of New York

Sotomayor Senate Questionnaire

Judges: Hon. Leonard B. Sand
U.S. District Judge
U.S. Courthouse
500 Pearl Street
New York, New York 10007
(212) 805-0244

Hon. Joel J. Tyler
Magistrate Judge, U.S. District Court
Home address:
2 Primrose Avenue
Yonkers, New York 10710
Telephone unpublished

Co-Counsel: Frances B. Bernstein
(Deceased)

Adversary: Stanley Yaker, Esq.
Attorney for Paolo Vincelli and Mario Vincelli
Former Address:
114 East 32nd Street
Suite 1104
New York, New York 10016
(212) 983-7241
Telephone not in service. I have been unable to locate Mr. Yaker.

No attorneys appeared for the remaining defendants, who settled pro se.

**Date of Inquest
Hearing:**

1/6/88

Case Descriptions: From 1985, my former firm represented Fendi S.a.s. di Paola Fendi e Sorelle ("Fendi") in Fendi's national anticounterfeiting work. Frances B. Bernstein, a partner at Pavia & Harcourt (now deceased), and I created Fendi's anticounterfeiting program. From 1988 until the time I left the firm for the bench in 1992, I was the partner in charge of that program. I handled almost all discovery work and substantive court appearances in cases involving Fendi. This work implicated a broad range of trademark issues including, but not limited to, trademark and trade dress infringement, false designation of origin, and unfair competition claims.

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Approximately once every two months from 1989 to 1992, I, for Fendi, applied for provisional injunctive relief in district court to seize counterfeit goods from street vendors or retail stores. These applications required extensive submission of evidence documenting Fendi's trademark rights, its protection of its marks, the nature of the investigation against the vendors, and Fendi's right to ex parte injunctive relief. Generally, the street vendors defaulted but others appeared and settled pro se. Two of these cases filed in the Southern District of New York were captioned Jane Doe v. John Doe and Various ABC Companies, 89 Civ. 3122, the Hon. Thomas P. Griesa presiding (Tel. No. (212) 805-0210), and Fendi S.a.s. Di Paola Fendi e Sorelle v. Dapper Dan's Boutique, 89 Civ. 0477, the Hon. Miriam G. Cedarbaum presiding (Tel. No. (212) 805-0198).

The preceding two cases (A4 and A5) involved a trial and a damages hearing on Fendi's trademark claims against the defendants. In the first, the Burlington case, Fendi alleged that defendants knowingly trafficked in counterfeit goods and Fendi sought triple profits from the defendants and punitive damages. After extensive discovery, submission of a pre-trial order and memorandum, and Fendi's presentation of its expert at trial, the case settled. I was sole counsel present at trial. In the Cosmetic World case, the Court granted Fendi's summary judgment motion on liability and referred the matter to a magistrate judge for an inquest on damages. See 642 F. Supp. 1143 (S.D.N.Y. 1986). I conducted the contested hearing on damages before the magistrate judge who recommended an award in Fendi's favor.

6.

Case Name: Republic of the Philippines v. New York Land Co., et al. (the "Philippines Case") and Security Pacific Mortgage and Real Estate Service Inc. v. Canadian Land Company, et al. (the "Security Pacific Case").

Case Nos.: 90-7322 and 90-7398

Court: United States Court of Appeals for the Second Circuit

Panel: Hon. Thomas J. Meskill
U.S. Circuit Judge
114 W. Main Street, Suite 204
New Britain, Connecticut 06051
(203) 224-2617

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Hon. Lawrence J. Pierce
U.S. Circuit Judge
c/o U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 791-0951

Hon. George C. Pratt
U.S. Circuit Judge
U.S. Courthouse
Uniondale Avenue
Hempstead Turnpike
Uniondale, New York 11553
(516) 485-6510

Co-Counsel:

David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500

David Glasser, Esq.
Levin & Glasser, P.C.
675 Third Avenue
New York, New York 10471
(212) 867-3636

Roy L. Reardon, Esq. (455-2840)
David E. Massengill, Esq. (455-3555)
Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017

Adversaries:

Jeffrey J. Greenbaum, Esq.
James M. Hirschhorn, Esq.
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
Attorneys for the Republic of the Philippines
Legal Center
1 Riverfront Plaza
Newark, New Jersey 07102
(201) 643-7000

Date of Argument: 6/15/90 (Argued by Roy L. Reardon, Esq. of Simpson, Thacher & Bartlett)

AND

District Court

Case Name: **Republic of the Philippines v. New York Land Co., et al.** (the "Philippines Case") and **Security Pacific Mortgage and Real Estate Service Inc. v. Canadian Land Company, et al.** (the "Security Pacific Case").

Case Nos.: The Philippines Case: 86 Civ. 2294
The Security Pacific Case: 87 Civ. 3629

Court: United States District Court, Southern District of New York

Judge: Hon. Pierre N. Leval
U.S. Circuit Judge (Then District Court Judge)
U.S. Circuit Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 857-2319

Co-Counsel: David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500

David Glasser, Esq.
Levin & Glasser, P.C.
675 Third Avenue
New York, New York 10471
(212) 867-3636

Participating

Adversaries

Opposing Motion: Jeffrey J. Greenbaum, Esq.
James M. Hirschhorn, Esq.
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross
Attorneys for the Republic of the Philippines
Legal Center
1 Riverfront Plaza
Newark, New Jersey 07102
(201) 643-7000

Michael Stanton, Esq.
Weil, Gotshal & Manges
Attorneys for Security Pacific
767 Fifth Avenue
New York, New York 10153
(212) 310-8000

Date of Argument: 2/12/90

Case Description: My former firm, Pavia and Harcourt, represented Bulgari Corporation of America ("Bulgari"), an international retailer of fine jewelry, who was a tenant in the Crown Building at 730 Fifth Avenue, New York, New York. The Crown Building was the subject of a foreclosure sale in the Security Pacific Action, and its beneficial ownership was in dispute in the Philippines Action. Bulgari was not a party to these actions. The district court denied Bulgari's request, by way of Order to Show Cause, to approve a rental amount it had reached with the manager of the Crown Building. I primarily drafted the papers presented to the district court and argued the motion. Bulgari's motion attempted to demonstrate that no competent evidence existed to dispute Bulgari's proof that the rental amount agreed upon was at or above fair market value and benefited the Crown Building and its claimants. Bulgari appealed the district court's denial of its approval of the rent agreement on the grounds that the denial was effectively an injunction against Bulgari's exercise of its contractual lease rights to have its rent fixed by agreement during the term of the lease, and that the district court improperly granted the injunction without a hearing. I did not argue the appeal but participated extensively in the drafting of appellant's brief and reply. The district court's Order was affirmed on appeal, without a published opinion. 909 F.2d 1473 (2d Cir. 1990).

7.

Case Name: Miserocchi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.

Case No.: 85-7734

Court: United States Court of Appeals for the Second Circuit

Panel: Hon. J. Edward Lumbard
Senior Judge
U.S. Circuit Judge
U.S. Courthouse
Foley Square
New York, New York 10007
(212) 857-2300

Hon. James L. Oakes
Then-Chief Judge
U.S. Circuit Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 857-2400

Hon. George C. Pratt
U.S. Circuit Judge
U.S. Courthouse
Uniondale Avenue
Hempstead Turnpike
Uniondale, New York 11553
(516) 485-6510

Adversary: Stephen P. Sheehan
Wistow & Baryllick
61 Weybosset Street
Providence, Rhode Island 02903
(401) 831-2700

Date of Argument: 9/17/84

AND

District Court

Case Name: Miserochi & C., SpA v. Alfred C. Toepfer International, G.m.b.H.

Case No.: 84 Civ. 6112

Court: United States District Court, Southern District of New York

Judge: Hon. Kevin Thomas Duffy
U.S. District Judge
U.S. Courthouse
40 Foley Square
New York, New York 10007
(212) 805-6125

Co-Counsel: David A. Botwinik, Esq.
Pavia & Harcourt
600 Madison Avenue
New York, New York 10022
(212) 980-3500

Adversary: Stephen P. Sheehan
Wistow & Baryllick
61 Weybosset Street
Providence, Rhode Island 02903
(401) 831-2700

Date of Argument: 9/5/84 (argued by David Botwinik of Pavia & Harcourt)

Case Description: This action involved the bankruptcy of an Italian corporation, Miserochi & C., SpA ("Miserochi"), with affiliates in London and elsewhere. The London affiliate of Miserochi breached a grain commodity trading contract with my then client, Alfred C. Toepfer International, G.m.b.H. ("Toepfer"). Toepfer demanded arbitration of the dispute against both Miserochi and its London affiliate under the terms of the grain commodity trading agreement between the parties and a guarantee signed by Miserochi. Shortly before the arbitration hearing was to commence, Miserochi moved to stay the arbitration against it, arguing that it was not a party to the arbitration agreement. Although my partner, David A. Botwinik, argued the motion before the district court, I primarily drafted Toepfer's responsive papers to the motion to stay arbitration and the cross-motion to compel arbitration. Toepfer argued that Miserochi was

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bound to arbitrate both as an alter ego of its London affiliate and under the terms of its guarantee. After the district court ruled in Toepfer's favor, Miserocchi filed a notice of appeal and sought an expedited stay of the district court's Order denying the stay of arbitration and compelling arbitration. I argued the motion to stay. At the conclusion of the argument on the motion, the Second Circuit not only denied the motion for a stay but also dismissed the appeal. I participated extensively as co-counsel in the arbitration that followed and subsequently appeared in the post-confirmation proceedings resulting from the arbitration award rendered in favor of Toepfer. The matter settled before the hearing on appeal of the confirmation order.

8.

Case Name: **The People of the State of New York v. Clemente D'Alessio and Scott Hyman**

Indictment No.: 4581/82

Judge: Hon. Thomas B. Galligan (retired)
Then-Acting Justice, Supreme Court,
c/o Administrative Judge's Office
Juanita Newton
111 Centre Street
New York, New York 10013
(212) 374-4972

Associate Counsel: Karen Greve Milton
Director of Education Training Program
Association of the Bar of the City of New York
42 West 44th Street
New York, New York 10036-6690
(212) 382-6619

Adversaries: Steven Kimelman, P.C.
Attorney for Scott Hyman
757 Third Avenue
New York, New York 10017
(212) 421-5300

James Bernard, Esq.
Attorney for Clemente D'Alessio
150 Broadway
New York, New York 10038
(212) 233-0260

Dates of Trial: 2/2/83 to 3/2/83

Case Description: I was lead counsel in this action in which defendants were charged with selling videotapes depicting children engaged in pornographic activities. Defendant Scott Hyman dealt directly with the undercover agent and attempted to raise numerous defenses at trial based upon his alleged drug addiction. The proof against defendant Clemente D'Alessio was circumstantial and he raised a misidentification defense at trial. This action was the first child pornography case prosecuted in New York State after the U.S. Supreme Court upheld the constitutionality of New York's laws in New York v. Ferber, 458 U.S. 747 (1982). The defendants filed a plethora of motions before and during trial. The defendants' request for severance was denied, as were, after a hearing, the defendants' motions for the suppression of statements, evidence, and identification. Other issues addressed at trial included whether the trial court should or could, upon defendants' request, require the government to stipulate to the pornographic nature of the evidence, whether defendant Hyman could present expert testimony on the effects of drug addiction on mens rea, and whether defendant Hyman was entitled to jury charges on diminished capacity or intoxication. The jury convicted defendants after trial. The defendants received sentences, respectively, of 3½ to 7 years and 2 to 6 years. The convictions were affirmed on appeal. See People v. D'Alessio, 62 N.Y.2d 619, 476 N.Y.S.2d 1031 (Ct. App. 1984); People v. Hyman, 62 N.Y.2d 620, 476 N.Y.S.2d 1033 (Ct. App. 1984).

9.

Case Name: The People of the State of New York v. Richard Maddicks

Indictment No.: 886/82

Court: Supreme Court of the State of New York, County of New York

Judge: Hon. James B. Leff (retired)
Justice, Supreme Court
c/o Administrative Judge's Office
Juanita Newton
100 Centre Street
New York, New York 10013
(212) 374-4972

Lead Counsel: Hugh H. Mo, Esq.
Law Offices of Hugh H. Mo
750 Lexington Avenue
15th Floor
New York, New York 10022
(212) 750-8000

Adversary: Peter A. Furst, Esq.
100 Pine Street
Suite 2750
San Francisco, California 94111
(415) 433-2626

Dates of Trial: Almost all of January 1983

Case Description: The defendant was dubbed the "Tarzan Murderer" by the local Harlem press because he committed burglaries by acrobatically jumping or climbing from roof tops or between buildings and entering otherwise inaccessible apartments. If the defendant found a person in the apartment, he shot them. I was co-counsel on the case, and prepared and argued the motion, before Justice Harold Rothwax, that resulted in the court consolidating the trial of four murders and seven attempted murders relating to eleven of the defendant's burglaries. The consolidation was unusual in that up to that point, most New York courts had limited consolidation to crimes in which an identical modus operandi had been used. We argued successfully that the commonality of elements in the crimes, although with some variations in modus operandi, warranted consolidation. I participated extensively in preparing and presenting expert and civilian witnesses at trial. The defendant was convicted after trial, and sentenced to 67½ years to life. The conviction was affirmed on appeal. See People v. Maddicks, 70 N.Y.2d 752, 520 N.Y.S.2d 1028 (Ct. App. 1987).

10.

Case Name: The People of the State of New York v. Manny Morales a.k.a. Joey Hernandez, Joseph Pacheco, and Eduardo Pacheco

Indictment No: 4399/82

Judge: Hon. Alfred H. Kleiman (retired)
Then-Acting Justice, Supreme Court
c/o Administrative Judge's Office
Juanita Newton
100 Centre Street
New York, New York 10013
(212) 374-4972

Adversaries: Ira I. Van Leer (deceased)
(Associates present at portions of the trial: Valerie Van Leer-Greenberg and Howard Greenberg)
Van Leer and Greenberg
Attorneys for defendant Manny Morales a.k.a. Joey Hernandez
132 Nassau Street, Suite 523
New York, New York 10038
(212) 962-1596

Lawrence Rampulla, Esq.
Attorney for defendant Edwardo Pacheco
2040 Victory Blvd.
Staten Island, New York 10314
(718) 761-3333

Stephen Goldenberg, Esq.
Attorney for defendant Joseph Pacheco
277 Broadway, Suite 1400
New York, New York 10007
(212) 346-0600

Dates of Trial: March 25, 1983 to May 12, 1983

Case Description: This multiple-defendant case involved a Manhattan housing project shooting between rival family groups. I was sole counsel in this action on behalf of the government. Prior to trial, I conducted various hearings opposing defense motions to suppress statements and identifications. This

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lengthy trial involved witnesses with significant credibility issues. The jury convicted one of the three defendants who was sentenced to 3 to 6 years for Criminal Possession of a Weapon in the Third Degree. The conviction was affirmed on appeal. See People v. Pacheco, 70 N.Y.2d 802, 522 N.Y.S.2d 120 (Ct. App. 1987).

Additional Question under Item 18: In addition, if the majority of cases you list in response to this question are older than five years, provide the name, address and phone number for 10-12 members of the legal community who have had recent contact with you, even if the contact was only an appearance before you as a judge.

I have interpreted this question to be seeking a list of individuals who are familiar with my judicial work because they are knowledgeable about some of my cases or opinions, or because they have appeared before me. If you seek only individuals who have tried cases or made other substantive appearances before me, please advise me. I list these individuals in alphabetical order.

1. Martin J. Auerbach, Esq.
Dormand, Mensch, Mandelstan, Schaeffer
747 Third Avenue
New York, New York 10017
(212) 759-3300
2. The Hon. Miriam G. Cedarbaum
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1330
New York, New York 10007
(212) 805-0198
3. Justin N. Feldman, Esq.
Kromish, Lieb, Weiner & Hellman
1114 Avenue of the Americas, 47th Floor
New York, New York 10036-7798
(212) 479-6210

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4. Leonard F. Joy, Esq.
Attorney-in-Charge
Legal Aid Society, Federal Defender Division
52 Duane Street
New York, New York 10007
(212) 285-2830
5. John Kidd, Esq.
Rogers & Wells
200 Park Avenue
New York, New York 10166-0153
(212) 878-8000
6. The Hon. John G. Koeltl
United States District Court Judge
Southern District of New York
500 Pearl Street, Room 1030
New York, New York 10007
(212) 805-0222
7. Sara Moss, Esq.
Vice-President and General Counsel
Pitney Bowes
1 Elmcroft Road
Stamford, Connecticut 06926
(203) 351-7924
8. John S. Siffert, Esq.
Lankler, Siffert & Wohl
500 Fifth Avenue, 33rd Floor
New York, New York 10110
(212) 921-8399
9. Gerard Walperin, Esq.
Rosenman & Colin
575 Madison Avenue
New York, New York 10022
(212) 940-7100

10. Mary Jo White, Esq.
United States Attorney for the Southern District of New York
U.S. Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
(212) 791-0056
19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In the last five years as a judge, my legal activities have spanned the gamut of federal jurisdiction. As part of my daily work, I have addressed many of the complex legal questions of our time in fields as diverse as the First and Fourteenth Amendments to the United States Constitution, antitrust, securities, habeas corpus, immigration, tax, intellectual property, ERISA, employment discrimination, and many other areas of law. The numerous opinions I have cited in Question Number 15 describe in detail many of these significant cases.

A great part of my litigation work while in private practice involved pre-trial and discovery proceedings for cases which were typically settled before trial. I conducted a number of preliminary injunction hearings in trademark and copyright cases, and post-motion hearings before magistrate judges on a variety of issues. My work also involved rendering advice to clients on a wide variety of legal issues, including, but not limited to, product liability, warranty, antitrust, securities, environmental, banking, real estate, patents, employment, partnership, joint venture and shareholder laws; customs, automobile and joint tire regulations; and franchising and licensing matters. I, moreover, conducted over fifteen arbitration hearings involving, predominantly, export grain commodity trading on behalf of foreign buyers but also hearings involving banking, partnership, tire, and fashion industry disputes.

Finally, in addition to my work in establishing a national anti-counterfeiting program for Fendi S.a.s. Paola Fendi e Sorelle, I participated, on behalf of Fendi, in establishing a Task Force of prominent trademark owners to change New York State's anti-counterfeiting criminal statutes. I also supervised and participated in the national dealers and customer warranty relations programs for Ferrari North America, a division of Fiat Auto USA, Inc.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Because my former firm, Pavia & Harcourt, advises me on personal matters, I will continue to recuse myself from any matter in which my form firm or its clients, or a former client with whom I worked are involved. Similarly, I will continue to recuse myself from hearing any matter involving an issue in which I participated while a member of the Board of Directors of the non-profit organizations described in Part III, Question 1. I will further recuse myself from any matter involving a client or associate of my husband-to-be. In all matters, I will follow the dictates of 28 U.S.C. § 455 and the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

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	1996	1997
Salary - U.S.D.J.	\$133,600	\$66,800 to 5/31/97
Interest - Citibank Savings Acct.	\$ 912	\$ 373 to 6/1/97
Rent from Kings Co. Coop [\$1100 a month]	\$ 13,200	\$ 6600 to 6/1/97

My Financial Disclosure Report, A10, is attached.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

My Net Worth Statement and Schedule is attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Before my appointment as a judge, all of the non-profit organizations with which I had been affiliated served the disadvantaged either directly or through projects I had participated in developing. The Puerto Rican Legal Defense and Education Fund, for example, promotes, through legal and educational activities, the civil and human rights of disadvantaged Hispanics. I had served, at various times, as the First Vice President of the Board of Directors of the Fund and as Chairperson of its Litigation and Education Committees.

The State of New York Mortgage Agency ("SONYMA") structures affordable housing programs for residents of the State of New York. During my service on its Board of Directors, SONYMA, among many other projects, implemented special mortgage programs for low-income families to purchase homes.

I was also a member, in 1988, of the Selection Committee for the Stanley D. Heckman Educational Trust which granted college scholarships to minorities and first generation immigrants. I had, moreover, served, in 1990-1991, as a member of New York State's Panel on Inter-Group Relations. The Report of that Panel is attached.

Finally, I had been a member of the New York City Campaign Finance Board from its inception in 1988 until 1992. This Board distributes public funds to candidates for certain elective positions in New York City when such candidates agree to limit the amount of the contributions they will accept, and expenditures they will make, during campaigns.

The time I devoted to my service to these assorted organizations varied through the years but it was never less than two hours a week and had been over eight hours a week during certain periods. I devoted an average of approximately six hours a week cumulatively to the various non-profit organizations of which I was a member.

The Code of Judicial Conduct limits my ability to provide legal service to the disadvantaged. While a judge, I nevertheless contribute my time as permitted by law to bar and law school activities. I have served as an honorary member of the Public Service Committee of the Federal Bar Council. I also serve on the selection committees for the Root-Tilden-Snow Scholarship granted to selected New York University Law School students interested in public service and the Kirkland and Ellis New York Public Service Fellowship granted to a Columbia Law School graduate to support a year's employment in public service. I serve on moot court panels and in trial advocacy courses at local law schools and for the office of the District Attorney of New York County; I also speak regularly at bar association functions on issues such as judicial clerkships for minority students and women in the law. Finally, I have lectured about trial advocacy skills at the Office of the Attorney General for the State of New York. It is difficult to quantify the time I spend on these activities because I participate in functions as my schedule permits. I estimate that I attend at least one community service function a month, and often twice a month.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interview in which you participated).

I am not aware of any selection commission which recommended me for this Circuit Court nomination. I was interviewed by the Office of the Counsel to the President in or about March of 1996 and again in March of 1997. Thereafter, the American Bar Association and the Federal Bureau of Investigations interviewed me. The President's nomination followed.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

At the time I was nominated as a district court judge, I answered this question as follows:

"Our Constitution vests the right to make and administer laws in the legislative and executive branches of our government. Judges impermissibly encroach upon that right by rendering decisions that loosen jurisdictional requirements outside of the scope of established precedents and by fashioning remedies aimed at including parties not before the court to resolve broad societal problems.

Judges must provide fair and meaningful remedies for violations of constitutional and statutory rights to the parties before a court. Doing so can, at times, affect broad classes of individuals, may place affirmative burdens on governments and society and may require some administrative oversight functions by a court.

A judge's decision should not, however, start from or look to these effects as an end result. Instead, because judicial power is limited by Article III of the Constitution, judges should seek only to resolve the specific grievance, ripe for resolution, of the parties before the court and within the law as written and interpreted in precedents. Intrusion by a judge upon the functions of the other branches of government should only be done as a last resort and limitedly."

My service as a judge has only reinforced the importance of these principles. Finding and maintaining a proper balance in protecting the constitutional and statutory rights of individuals versus protecting the interest of government, financial and otherwise, is very difficult. Judges must be extraordinarily sensitive to the impact of their decisions and function within, and respectful of, the constraints of the Constitution.

United States Senate

WASHINGTON, DC 20510

*File -
Sotomayor*

April 9, 1998

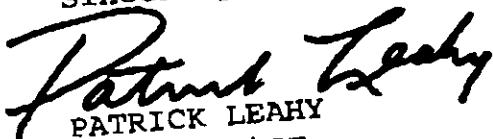
The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510


Dear Senator Lott:


On March 23, faced with five vacancies on a 13-member Court, Chief Judge Winter of the United States Court of Appeals for the Second Circuit certified the judicial emergency caused by these vacancies, began canceling hearings and took the unprecedented step in the Second Circuit of authorizing 3-judge panels to be composed of two visiting judges and only one Second Circuit Judge. The Judiciary Committee has reported to the Senate the nomination of Judge Sotomayor by a vote of 16 to 2. Three additional outstanding Second Circuit nominees are pending before the Judiciary Committee and await their confirmation hearings: Judge Rosemary Pooler; Robert Sack, a partner in the law firm of Gibson Dunn & Crutcher; and Chester J. Straub, a partner in the law firm of Wilkie Farr & Gallagher.


We urge prompt and favorable action on the nomination of Judge Sonia Sotomayor to the Second Circuit when the Senate returns on April 20 and thank you for your consideration of this important matter.

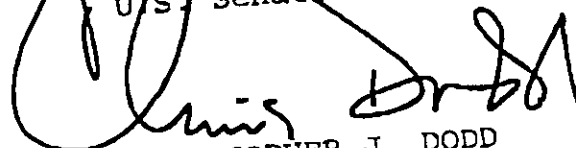
Sincerely,



PATRICK LEAHY
U.S. Senator


ALFONSE D'AMATO
U.S. Senator


JAMES JEFFORDS
U.S. Senator


DANIEL PATRICK MOYNIHAN
U.S. Senator


CHRISTOPHER J. DODD
U.S. Senator


JOSEPH LIEBERMAN
U.S. Senator

United States Senate

WASHINGTON, DC 20510

April 9, 1998

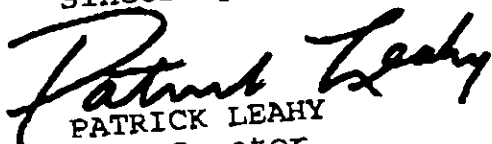
The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510

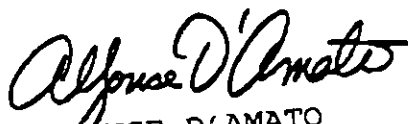
Dear Senator Lott:

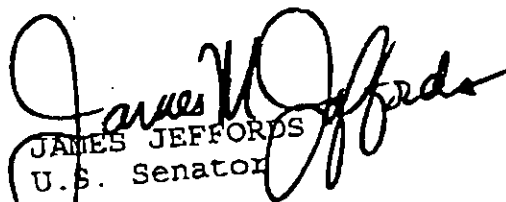
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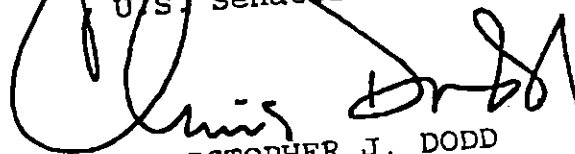
Sincerely,

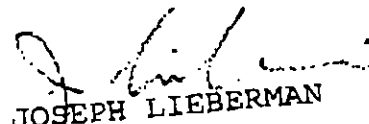

PATRICK LEAHY
U.S. Senator


ALFONSE D'AMATO
U.S. Senator


JAMES JEFFORDS
U.S. Senator


DANIEL PATRICK MOYNIHAN
U.S. Senator


CHRISTOPHER J. DODD
U.S. Senator


JOSEPH LIEBERMAN
U.S. Senator

PUERTO RICAN BAR ASSOCIATION

FACSIMILE TRANSMITTAL SHEET

TO:

Ms. Sarah Wilson
Mr. Mark Childress
Mr. Michael O'Connor

FROM:

Xavier Romeu

COMPANY:

DATE:

09/29/98

FAX NUMBER:

456-1647
514-2424

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RE:

Judge Sonia Sotomayor

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

This went out on Tuesday and we expect to have something in the New York papers on Thursday.



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PUERTO RICAN BAR ASSOCIATION, INC.

FOR IMMEDIATE RELEASE
September 29, 1998

Contact: Nicole Rowe
(202) 778-0723

WOMEN, HISPANIC AND ASIAN AMERICAN GROUPS CONDEMN SENATE INACTION

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 Roberto Vélez, Esq.

General Counsel

John Quiñones, Esq.

Special Counsel

Carol Robles-Román, Esq.

Student Liaison

Cesar de Castro

The Puerto Rican Bar Association has joined a coalition of prominent legal, women's Asian American and Hispanic organizations, to call on the Senate leadership to schedule an immediate vote on the nomination of Judge Sonia Sotomayor to the United States Court of Appeals for the Second Circuit. Members of the coalition include the National Conference of Women's Bar Associations; the Hispanic National Bar Association; the Cuban American Bar Association of the Northeast; the Dominican Bar Association; the Asian Bar Association of New York; the League of United Latin American Citizens (LULAC); the National Council of La Raza; the National Association of Latino Elected Official (NALEO); and the Women's Bar Association of the State of New York.

The first Puerto Rican woman to serve in a federal court in the continental United States, Judge Sotomayor had been a prosecutor in Manhattan and a litigation partner practicing in the field of commercial law at the firm of Pavia and Harcourt prior to her appointment to the district court. In 1992, President Bush appointed her to the Southern District of New York. There she has developed a brilliant record, as was widely reported and recognized during her handling of the National Labor Relations Board baseball strike injunction case in 1995. She was nominated to the United States Court of Appeals for the Second Circuit on June 25, 1997. The Senate Judiciary Committee voted her nomination out on March 15, 1998, with an overwhelming bipartisan 16 to 2 vote.

As the Congressional session comes to an end, the coalition has become stronger in its appeal to the Senate to schedule a vote for the Judge's confirmation. "We find the explanations offered last week that difficulties with President Clinton's legislative agenda are holding up the confirmation to be insufficient. Judge Sotomayor has been waiting for confirmation for over 14 months. Countless other nominees, including 3 to her own Circuit, have been confirmed since she was named and voted out of committee" said Lillian Apodaca, **President of the Hispanic National Bar Association**. "It is time for the Senate to explain to the Hispanic-American community why a highly qualified and respected judge is not being elevated to the United States Court of Appeals for the Second Circuit."

"Judge Sotomayor is a highly respected federal judge in the Southern District of New York and is widely recognized as a scholarly and serious judge who applies the law as written and on precedent and does not "legislate" from the bench," said Melinda Aikins Bass, **President of the Women's Bar Association of the State of New**

50 ½ East 84th Street, New York, New York 10021
Telephone (212) 280-5306

York. "Judge Sotomayor's record as a jurist is outstanding. Her decisions reflect her intelligence, character, maturity and seasoned judicial temperament."

Hispanic leaders also expressed deep disappointment over the lack of confirmation of Latino judges, an issue that has resonated loudly with the U.S. Hispanic-American community. "It is unacceptable that the Senate has refused to vote for any of the highly qualified Hispanic judges currently awaiting appointment," said **David Matta, Chair of the Federal Affairs Committee of the Puerto Rican Bar Association.** "Senator D'Amato has assured us on several occasions that he was working to make it happen; and we believe that only through his leadership will the confirmation become a reality. We want the Senate leadership to know that the New York community is fiercely proud of its daughter and is watching this issue very closely," he added.

Coalition members are confident that the Senate will bring the nomination to a vote before the end of the 105th Congress. "A judicial candidate with Judge Sotomayor's excellent record and background certainly deserves approval, whether or not she happens to be a Hispanic woman," added **Carmen Torrent, President of the Puerto Rican Bar Association.** "We cannot believe that the Senate will conclude that we are not welcome in the upper levels of our government and society."

###

[Additional information attached]

The following are in response to some of the unfounded statements found in the Wall Street Journal:

FACTS ABOUT JUDGE SONIA SOTOMAYOR'S RECORD

- Judge Sotomayor spent over four years as a prosecutor in the New York County District Attorney's office. Among her successes was the first prosecution under New York's child pornography statute after the Supreme Court's upheld the statute's constitutionality.
- While in private practice as a partner of Pavia & Harcourt, Judge Sotomayor was instrumental in securing the passage of New York State's anti-counterfeiting law.
- On the federal bench, Judge Sotomayor has compiled an impressive record as a thoughtful jurist who combines sensitivity to the rights of individuals with a proper respect for the role of the judiciary and the deference due to the political branches. Some pertinent facts about her record as a federal judge include:
- In a sentencing about which she was extensively questioned by members of the Judiciary Committee, United States v. Gonzalez, Judge Sotomayor expressed her belief that, in certain cases where justice required, Congress and the President should consider granting judges the freedom to sentence according to the Sentencing Guidelines where those guidelines dictated a sentence below the statutory minimum. One year later, Congress amended the law to provide for exactly such a "safety valve" provision. Despite this belief that the law should be changed and despite the fact that defendant had offered a legal argument that under existing law the statutory minimum did not need to be applied, Judge Sotomayor in the Gonzalez case did apply the statutory minimum in accordance with the law.
- In fact, far from being reluctant to sentence according to congressional dictate, Judge Sotomayor has faithfully applied the Sentencing Guidelines in her criminal cases. In her first five years on the bench, Judge Sotomayor departed downward (other than when requested by the government) in only 6.5% of her sentences, a rate well below the national average of 10% and less than half the 15% average compiled by her colleagues in the Second Circuit. Moreover, her upward departure rate of 2.7% is higher than the 0.9% national average.
- Among the dozens of suppression motions which she has addressed, the record indicates only one case in which Judge Sotomayor granted a defendant's motion, and that on the ground that the information supplied to the Magistrate Judge who issued the warrant was misleading and incomplete.
- Judge Sotomayor has never refused to apply a criminal law statute on the grounds that it was unconstitutional. In fact, she has upheld several federal statutes specifically against constitutional attacks, among them the Hostage Taking Act, 18 U.S.C. § 1203, the electronic device provisions of the Wiretap Act, 18 U.S.C. § 2512, and the statute of limitations provisions of the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244.

- CLINTON LIBRARY PHOTOCOPY

SONIA SOTOMAYOR

EDUCATION:

YALE LAW SCHOOL, New Haven, Connecticut

J.D., June 1979

Editor, Yale Law Journal

Managing Editor, Yale Studies in World Public Order

Semi-finalist, Barristers Union

PRINCETON UNIVERSITY, Princeton, New Jersey

B.A., summa cum laude. June 1976

Member, Phi Beta Kappa

Co-winner, M. Taylor Pyne Honor Prize - prize awarded annually to the senior(s) who has most clearly manifested excellent scholarship and effective support of the best interests of Princeton University

Honorable mention, Senior Thesis, Latin American Studies

EMPLOYMENT HISTORY:

UNITED STATES DISTRICT JUDGE

Southern District of New York

10/2/92 to present

PAVIA & HARCOURT

600 Madison Avenue

New York, New York 10022

Partner

1/1/88 to 9/30/92

Associate

4/84 to 12/87

International commercial litigation, including the drafting of pleadings, all phases pre-trial discovery, depositions, motion practice; trials, and appellate briefs and arguments. Extensive experience in the arbitration of commercial and commodity export trading cases.

NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE

New York, New York

Assistant District Attorney

9/79 to 3/84

Responsibilities include investigation and evaluation of felony cases, grand jury presentations, pre-trial motion practice, bench and jury trials, appellate briefs and arguments.

PUBLICATIONS:

Statehood and the Equal Footing Doctrine: The Case For Puerto Rican Seabed Rights,
88 Yale Law Journal 825 (1979).

Sonia Sotomayor & Nicole A. Gordon, *Returning Majesty to the Law and Politics: A
Modern Approach*, 30 Suffolk U.L. Rev. 35 (1996).

ASSOCIATIONS:

Adjunct Professor, New York University School of Law.
Member, American Bar Association.
Member, Hispanic Bar Association.
Member, Puerto Rican Bar Association.
Member, Association of Judges of Hispanic Heritage.

Former Member, Second Circuit Task Force on Gender, Racial and Ethnic Fairness
In the Courts.

Former Member, New York City Campaign Public Finance Board (Mayor's Appointee),
1988-1992.

Former Member, Board of Directors, State of New York Mortgage Agency (Governor's
Appointee), 1987-1992.

Former Member, Board of Directors, Puerto Rican Legal Defense and Education Fund,
1980-1992.

LANGUAGES:

English and Spanish

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by Kate Stith, Jose A. Cabranes

Book Information

Hardcover (August 1998)
Univ of Chicago Pr (Txt); ASIN:
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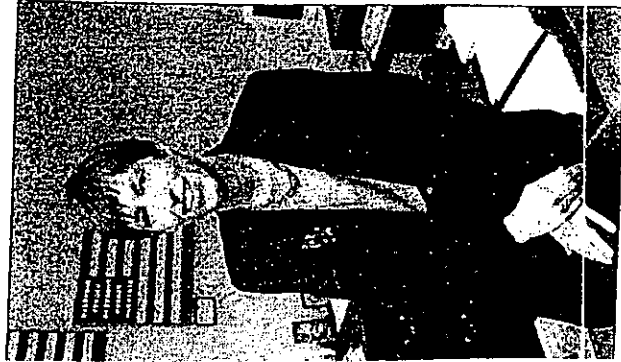
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City on behalf of persons exposed to lead poisoning, the court unanimously vacated a criminal contempt order because it had not been clearly established there was a deliberate and willful violation of the preliminary injunction by the City. In another finding in *City Coalition to End Lead Poisoning v. Walker*, to be published tomorrow, the panel removed the State as a party in the class action, based on alleged noncompliance with Medicaid laws and regulations dealing with lead paint screening of children.

The Administrative Judge for Civil Term in Manhattan Supreme Court has removed Justice Emily Jane Goodman from hearing the challenge to the constitutionality of the state's new rent-deposit law and randomly reassigned it to Justice Edward H. Lehner. Details appear on page 4.

gement Support ned Her Stripes



PHOTOGRAPH BY JEFFREY M. HARRIS

According to the multiple restrictive conditions herein, it is the Division of Parole that has the judicial function of setting the terms of release in parole," said Justice Eugene Nardelli, writing for a unanimous court.

"The difficult area of sexual abuse of children and prevention has no one easy solution."

Under New York's Megan's Law, the New York Sex Offender Registration Act (SORA), which became effective in 1996, convicted sex offenders must register with authorities and face the possibility that the public may be notified.

N.Y. LAW JOURNAL 12/10/97

2d Circuit Court Nomination Hits a Snag

BY DEBORAH PINES

WHEN SOUTHERN District Judge Sonia Sotomayor was nominated in June for a seat on the U.S. Court of Appeals for the Second Circuit, some predicted smooth sailing. Judge Sotomayor, a Bush appointee to the district court and an Hispanic woman, had won acclaim for ending the 1995 baseball strike.

Instead, Judge Sotomayor, 43, has faced turbulent waters that could ultimately sink her chances when the U.S. Senate returns from recess on Jan. 27. She is awaiting confirmation for one of four vacant seats on the Manhattan-based federal appeals court.

New York's senators, both of whom are supporting Judge Sotomayor, express optimism about her appointment. "I think she'll get through," said Republican U.S. Senator Alfonse D'Amato, during a recent stop in New York City.

Tony Bullock, chief of staff for Democratic U.S. Senator Daniel Patrick Moynihan, this week called her chances "excellent," attributing the delay to the timing of her

The panel, however, disagreed on all counts in its decision in *In re M.G. v. Travis*, which affirmed a lower court order dismissing Mr. G.'s petition.

"Prevention, and not punishment, is the primary purpose of Megan's Law," declared Justice Nardelli, who was joined by Justices Richard W. Wallach, Peter Tom, Angela M. Mazarelli and Nicholas Colabella.

The conditions imposed on Mr. G. "meet the spirit and intent of the Legislature in passing Megan's Law and are within the responsibility of the Division of Parole."

vision of Parole."

In addition, he noted, the U.S. Court of Appeals for the Second Circuit, this year in *Doe v. Pataski*, 120 F.3d 1263, found that neither the law's registra-

Continued on page 6, column 6

Since we are not dealing with punishment at all, but prevention and deterrence."

Judge Eugene Nardelli

The decision will be published tomorrow.

Joining in the opinion were E. Leo Milonas, Israel Rubenstein, and Nicholas Reynolds Tobacco Company was challenging a determination by the City Finance Department that it had used the favorable depreciation formula in computing its cost in 1987 and 1988. The law was amended in 1994 to eliminate the depreciation deduction. Continued on page 4

IN BRIEF

Decisions of Interest

The following decisions of interest are published today, court indicated in the

U.S. COURT OF APPEALS

Constitutional Law: Justices close courtroom for the day to allow police to conduct a search of the premises. *Ayala v. Speckard*, Winter, Kearse, Miner, McLaughlin, Calabresi and Cabranes, in opinion by Newman. J. concurs in separate opinion. J. Cardamone and Altamari, in dissent by Parker. J. (p. 1).

SUPREME COURT

Commercial Law: Appellate court summary of *Executive Monetary Mgmt. v. New York, Justice Branstetter* (p. 1).

Criminal Law: Medical assessment discussed. *People v. Salvo, Bronx, Justice Barrett* (p. 1).

Labor Law: Fall into election covered under statute. *Street v. Lutheran Home, Kings, Bronx* (p. 34, col. 6).

CIVIL COURT

Ban on 'True Crime' Cards Invalidated

BY DEBORAH PINES

A NASSAU COUNTY law barring the sale to minors of trading cards depicting "heinous" crimes or criminals, including serial killers and organized crime figures, is unconstitutional, a federal appeals panel in Manhattan ruled yesterday, upholding a lower court.

A three-judge panel of the U.S.

THE CONTROVERSIAL TRADING CARDS THEY COULDN'T BAN!

TRUE CRIME

BY VALERIE JONES & PEGGY COLLIER • ILLUSTRATED BY JOHN BRIGHT

...considering conflicting testimony as to the amount of the efficiencies, the court found that operating savings of \$25 million to \$30 million per year would likely be made and, in light of an agreement between the hospitals and the State Attorney General, it was reasonably certain that such efficiencies would result in benefits to consumers. The court also found an increasing movement of Manhattan hospitals into

in keeping with the intent of the legislature, have attempted to confine antitrust litigation to economically rational limits." It added that the loss of amenity sales by plaintiff flowed directly from the cancellation of its trademark agreement and that these losses would have been suffered whether or not the franchisor made the alleged tying arrangements with the franchisees. Accordingly, the alleged antitrust violation was viewed

the Supreme Court's 1992 *Kodak* decision to franchisor-franchisee controversies has occasioned disagreement among lower courts in franchising cases. Given the importance of franchising to the national economy, the matter may have to be taken up by the Supreme Court unless these disagreements are resolved at the appellate level.

Circuit Nomination Hits a Snag

Continued from page 1, column 4

has refused to refer out for full Senate confirmation those nominees deemed too liberal or activist.

Her chances are considered better than nominees who have never had hearings. But she remains the only second-term Clinton nominee for a circuit judgeship who has been through a hearing but has not been referred out. She is also the only nominee of seven, including one other for circuit court and five for district court, that were considered on Sept. 30 who has not been voted out.

Her hearing was marked by tough questions about some of her past statements and rulings, which also were denounced the same day on the radio by conservative talk show host Rush Limbaugh.

Judiciary committee members focused on two of Judge Sotomayor's prisoner-case opinions, *Holmes v. Arutz*, 95 Civ. 2309 (refusal to dismiss claims a prisoner lost a food services job because of his overt homosexuality), and *Campos v. Coughlin*, 94 Civ. 1057, (order that prison officials allow prisoners of Santeria faith to wear multi-colored beads under their clothes). They also questioned the judge about prior statements denouncing mandatory minimum drug sentences and suggesting possible opposition to U.S. Supreme Court Justice Clarence Thomas.

About her 1992 answer to a newspaper reporter, "I take the Fifth," when asked if she sat on her hands when Justice Thomas addressed a judges' gathering, U.S. Senator Jeff Sessions, R-Ala., asked, "Did you see fit to stand and applaud?"

"He was Supreme Court Justice for our circuit. I stood," Judge Sotomayor responded, according to a transcript of her hearing.

Senator Sessions set up questioning about her drug sentence statements,

like a skilled cross-examiner, by asking if she had on occasion disagreed with the federal sentencing guidelines or mandatory minimum sentences.

Judge Sotomayor said she "didn't remember" criticizing them and, in fact, added "I have no idea how the judges before me set a consistent standard" without guidelines.

Then the Senator pulled out a transcript from a July 26, 1993 sentencing of Louis Gomez in *United States v. Castellanos*, 92 Cr. 584, in which Judge Sotomayor said she hoped his case, "will be among the many that will convince our new President and Congress to change these minimums. The only statement I can make is this is one more example of an abomination being committed before our sight. You do not deserve this, sir."

When asked to comment, Judge Sotomayor told the senator that despite her personal feelings, "I imposed what the law required." She also noted that subsequent to her comments, the Senate reflected similar concerns when it adopted a "safety valve" provision enabling certain first-time drug offenders to escape the harsh mandatory minimum sentences.

Gauging the depth of committee opposition is tough. One Democratic source called the aggressive questioning a "bump in the road," which Judge Sotomayor will overcome. A plus for her, another source said, is that she has not attracted opposition from the leaders of two conservative groups, Thomas D. Lippman and Clint Bolick, who are spearheading fights against other Clinton judicial nominees.

John Cox, a spokesman for Senator Sessions, said the senator and his colleagues have questions about Judge Sotomayor's judicial demeanor.

But Mr. Cox and Steve Hilton, a spokesman for U.S. Senator John Ashcroft, R-Mo., another one of her tough questioners, said the senators are still undecided about her nomination.

OCA Appointment

Continued from page 1, column 2

"linchpin" of the plan to redesign the flow of cases in Housing Court.

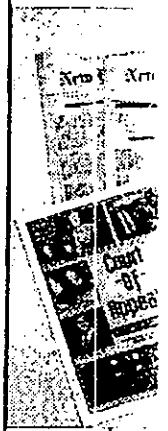
In visits to the Housing Courts in Brooklyn and Manhattan, Judge Fisher-Brandveen said Ms. Pfau was "greatly disturbed" at the sight of tenants and landlords working in the hallways. To allow negotiations to take place in a more dignified and supervised environment, Ms. Pfau proposed eliminating the central calendar part from which all cases were sent out for trial. She suggested dividing the judges into two groups, one to concentrate on settlements and the other to try those cases that fail to settle.

For Ms. Pfau, the law has been a second career. After graduating from Wells College in 1970 she spent six years teaching children with serious vision problems and earned a masters degree from Columbia University in special education. After about five years of child rearing and travel to Europe with her husband who worked for banks as an expert in international finance, Ms. Pfau enrolled in Brooklyn Law School and earned her degree in 1984.

Her first job after graduation was as one of approximately 15 lawyers on OCA's legal staff. It was in that job that she first came to Judge Lippman's attention. The two worked together to compile the court system's plan to hire, promote and retain women and minority employees. "We were very much on the same wavelength," Judge Lippman said.

Ms. Pfau was born in Minneapolis, but moved to Darien, Conn. at age 12, when her father, an executive for Mobil Corp. took a position in New York. Her mother was a real estate broker.

Ms. Pfau and her husband, Peter Pfau, have two children, Michael, 21, and Andy, 14. They own a Civil War-era farmhouse in Pennsylvania near Gettysburg, where they work together on historically accurate renovations. Ms. Pfau also enjoys gardening.



She's certainly not rude, but she's not particularly conversational. You don't feel like you're getting a lot of substantive discussion of the issues." "Her demeanor is respectful, but sometimes she seems put upon and harried. She doesn't have any quirks at all."

Most attorneys interviewed said that Bucklo is reasonable in terms of scheduling. "She maintains firm control without being overbearing." "She is very courteous to attorneys, and she's reasonably indulgent of their concerns and needs for time. She is, however, a stickler for the rules. She is bright and she understands the rules, and she wants to make sure that people adhere to them. She doesn't let lawyers slide around the Federal Rules of Civil Procedure." "She is accommodating of schedules. She's reasonable and friendly." "She recognizes that sometimes the lawyers just need more time. She's very reasonable with respect to scheduling." "She's not one who is open to scheduling changes. She had sort of a bad attitude and can be petty. She has no appreciation that defendants' lawyers' meters are ticking. On a relative basis, that's really nothing compared to some of the other judges."

Lawyers said that Bucklo is not overbearing with respect to settlement. "She doesn't push too hard in terms of settlement." "She doesn't push settlement at all." "She has limited involvement with settlement." "She tries to get her cases settled, and she does so effectively."

Civil litigators said that Bucklo is generally neutral or that she might favor plaintiffs slightly. Plaintiffs' lawyers said she doesn't show any preferences. "She doesn't have any plaintiff-orientation. She's evenhanded." "She's very fair." "She's fair." "She's very fair."

Civil defense lawyers found Bucklo to be impartial or somewhat plaintiff-oriented. "She tends to favor the small, little people over large corporations." "She's plaintiff-oriented." "She's neutral." "She seems very fair." "She's reasonable. She's a utilitarian judge. She understands that you're in court to get something resolved. She's very neutral." "She is neutral." "She's more plaintiff-oriented."

Criminal defense lawyers said that Bucklo does not favor the prosecution or the defense. "She is very fair." "She has not really handled a lot of criminal cases yet, and that area of the law is very new to her, but she's a decent person and she does the right thing. She's very reasonable." "She's fair. A defendant gets a fair trial and a fair sentence with her." "She's not prosecution-oriented, but she doesn't favor defendants either." "I'd say that she is generally fair, but that, if anything, she favors the prosecution. She is middle-of-the-road with respect to sentencing."

Ruben Castillo

District Judge; Illinois, Northern
2378 Dirksen Building
219 South Dearborn Street
Chicago, IL 60604
(312) 435-5878

Born 1954; appointed in 1994 by President Clinton

Education Loyola Univ., B.A., 1976.; Northwestern Univ. School of Law, J.D., 1979

Private Practice Jenner & Block, Chicago, 1979-84; Kirkland & Ellis, Chicago, 1991-93

Government Positions Deputy Clerk, Circuit Court of Cook County, 1974-79; Assistant United States Attorney, N.D. Ill., 1984-88

Other Employment Regional Counsel, Mexican American Legal Defense and Educational Fund, 1988-91

Academic Positions Adjunct Professor of Trial Advocacy, Northwestern Univ. School of Law, 1988-present

Professional Associations Vice President, Chicago Council of Lawyers, 1991-93; Member, Latin American Bar Assn., 1980-present; Board Member, Chicago Bar Foundation, 1991-present; A.B.A., 1979-present; Member, CIRA Advisory Group, 1991-93; Member, Advisory Board, Children and Family Justice Center, Northwestern Univ. Legal Clinic, 1992-present; Member of Judicial Selection Task Force, Special Commission on Administration of Justice, 1991-93

Other Activities Former Board Member, Business and Professional People for the Public Interest; Former Board Member, Chicago Legal Clinic; Board Member, Alumni Assn. of Northwestern Univ. School of Law; Visiting Committee, Northwestern Univ. School of Law

Honors & Awards Meritorious Service Award, Illinois State Bar Assn.; FBI Commendations for Outstanding Work as a Prosecutor, 1986; United States Secret Service Certificate of Appreciation; Maurice Weigle Award, Chicago Bar Foundation, 1989; 40 Under 40 Honor, Crain's Chicago Jaycee Organization; Attorney of the Year, Mexican American Lawyers Assn.; Community Service Award, Latin American Police Assn., 1989; Distinguished Alumni Citation, Loyola Univ., 1993; Public Service Award, Federal Bar Assn., 1993

Noteworthy Rulings 1994: Castillo denied the defendant's motion for summary judgment where the plaintiff alleged that the defendant terminated and denied him benefits in violation of the Americans with Disabilities Act of 1990 because he had AIDS. The plaintiff also alleged intentional infliction of emotional distress. *Smith v. Dovenmuehle Mortgage, Inc.*, No. 94 C 139 (N.D. Ill. 1994)

1994: Castillo refused to dismiss where plaintiffs—present and future African-American and Hispanic students and their parents—alleged that the Public Building Commission of Chicago, the Chicago Board of Education, and the City of Chicago blocked the construction of the expansion of the Chicago High School for Agricultural Sciences. They alleged that blocking the construction denied them equal and adequate educational facilities and benefits causing them to suffer a diminished quality and level of education services in violation of the Equal Protection Clause of the 14th Amendment. *Hodges et al. v. Public Building Commission of Chicago et al.*, No. 93 C 4328 (N.D. Ill. 1994)

Lawyers' Evaluation The majority of lawyers found Castillo to be a very skilled jurist. "Judge Castillo is a real professional. He has had a number of years of prior litigation experience, and he's just a delight to appear before. He cuts through all the garbage and gets to the heart of the matter. He is a very good judge. He rates very highly in my opinion." "His level of ability is excellent. He seems to be very bright and very decisive. He has read all the briefs, and he does his own independent research." "I would say he rates a nine or a 10 on a scale of one to 10." "He is a very fine judge, outstanding really." "He has a very high level of ability. He's good on the law, and he's

good in his application of the law to the facts." "I'd say his level of ability is very high. He is thorough and careful on both the facts and the legal issues." "He is very bright." "On a scale of one to four, I rate him a three. He's got the ability, but he is sometimes slow to exercise that ability." "Because I think he's totally biased in favor of plaintiffs and that partiality influences his level of ability, I'd give him an average to poor rating."

Litigators were split on the subject of Castillo's temperament. "He is very courteous and professional. He is a pro all the way." "His demeanor is very professional, I'd say it's good to excellent." "He has an excellent demeanor. He is very pleasant to be in front of." "He's very formal and strict, but he doesn't have any quirks and his temperament isn't anything that should surprise anyone. He is a little arrogant, but, then again, aren't most of us?" "His demeanor is good to excellent. He communicates very well with lawyers. What you see is what you get. If he's unhappy, he'll let you know. It takes a lot to make him unhappy." "He has a very judicious attitude." "He's professional, but he can be very cutting and condescending sometimes." "He is harsh to the point of unfairness." "He's not nice to appear before. He's a pain." "His demeanor varies. It really fluctuates."

A number of lawyers reported that Castillo is resolute and unwilling to accommodate scheduling changes. "He used to be good in the courtroom, but, unfortunately, he's become stern and arrogant. He doesn't have any quirks though." "He's unrealistic about deadlines and he won't grant extensions." "He makes both sides work hard, but he does things in a timely fashion. He is very methodical. He'll get you in court on the first day of a case, and he wants the pre-trial schedule, and he wants to know what all the legal theories are right up front." "He is sometimes given to posturing. If he has an audience, he will wax eloquent on topics. He will ridicule lawyers. He will try to make a point and use sarcasm to do so. You can be called on the carpet by him. Also, he really moves his cases. He doesn't fool around with extensions at all. He takes people to task for trying to reschedule something." "He really makes the lawyers do their homework to prove a point, though—even if he agrees with you. Also, he does independent research. He often comes up with additional authority. If something out there is even remotely relevant, he'll discuss it and if you don't know about it, he'll reprimand you."

Most attorneys indicated that Castillo is effective, but not overbearing, with respect to settlement. "I'd say he's just right when it comes to settlement." "He pushes settlement appropriately." "He is much more conscientious about settlement than other judges are. He does his homework in terms of reviewing the parties' positions. He lets his hair down and says where he thinks things are. He goes over the value of any potential recovery, what the chances are for getting that amount and so forth." "He pushes settlement rather hard, but he looks at things fairly." "He's middle-of-the-road on settlement. He won't break your arm. In some ways, he's cautious with respect to settlement." "He has a very methodical settlement conference procedure. He wants to hear what your best and worst case scenarios are. He almost uses a mathematical formula. He'll say, 'I conclude the plaintiff has a 75 percent chance of winning, the maximum recovery is x, so the plaintiff should get 75 percent of x.' If the parties won't settle, he'll litigate."

Civil lawyers said that Castillo is neutral or plaintiff-oriented. Most plaintiffs' lawyers reported that he is fair. "He has no plaintiff- or defendant-orientation. I'd say he's in between conservative and liberal." "I'm always thrilled when we draw Judge Castillo. He is very fair." "Having

both won some and lost some with him, I'd say he's fair overall. He's so thorough, that even when you lose, you know you really can't appeal a decision." "He's more pro-plaintiff than not."

Civil lawyers who represent both plaintiffs and defendants, depending upon the case, generally said that Castillo is impartial. "He's neutral. Some people think he's more defendant-oriented in civil rights matters." "He has no plaintiff- or defendant-orientation." "I would say he doesn't really have an orientation. He's been very fair. I'd say that, if anything, he might be defendant-oriented." "I trust him to reach the right decision."

Civil defense lawyers found Castillo to be plaintiff-oriented or fair. "He favors plaintiffs, definitely. Frankly, I hadn't heard good things about him, and that was borne out in my experience. He's too one-sided." "He is absolutely in the plaintiffs' box." "He's not very impartial." "He's neutral."

Criminal defense lawyers said that Castillo shows no preference for the government or defendants. "He is very fair in criminal cases." "He really has a feel for criminal cases because he spent so much time in the U.S. Attorney's office. He's not pro-government at all." "He gives defendants a fair shake." "He is a former prosecutor, so I'm a little wary of him. But he seems to be relatively reasonable." "He treats both sides of a criminal case with courtesy, and he also is polite to the defendant. He's fair to both sides."

Attorneys interviewed said Castillo is fair on sentencing. "He is middle-of-the road on sentencing." "He's also fair when it comes to sentencing. He's willing to consider extenuating factors when meting out punishment."

Miscellany Castillo practiced civil and criminal defense litigation with Kirkland & Ellis in Chicago. His typical clients were Chicago-based corporations. Castillo was co-counsel to Navistar in an ERISA class action involving complex tax and federal securities issues which settled in 1993. As an assistant United States Attorney, he received numerous commendations for his work, including a certificate of appreciation from the DEA for outstanding contributions in the field of drug law enforcement (1988); a United States Customs Service award for aggressive and diligent prosecution of a currency and heroin smuggling operation (1987); and an FBI commendation for outstanding work as a federal prosecutor (1986). Castillo also served as a member of the Civil Justice Reform Act Advisory Group for the Northern District of Illinois. *Inside Litigation*, May, 1994.

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UNITED STATES DISTRICT JUDGE

FAX

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FROM: Sonia SotomayorRE: N.Y. Law Journal ArticleTOTAL NUMBER OF PAGES INCLUDING THIS SHEET: 3

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Exploitation Found in Payments to Homeless

Continued from page 1, column 6

wages as per the FLSA.

In addition to ordering back wages (the difference between what the workers were paid and what they should have received under federal minimum wage laws) the judge also ordered the GCPs to pay liquidated damages and reasonable attorneys' fees.

No Exemptions

While noting that the programs run by the GCP had helped serve the needs of the homeless, Judge Sotomayor said that "the question of whether such a program should be exempted from the minimum wage laws is a policy question either Congress or the Executive Branch should make."

Observing that the defendants had failed to exercise their right to apply for such exemptions and "should have done so," the judge said that she "cannot grant an exemption where one does not exist in law."

The plaintiffs, who had each logged between 700 and 1,400 hours in the PTE program from 1990 to 1995, started their suit in February 1995.

In addition to claiming that the defendants, GCP, SSC and the 34th Street Partnership, Inc., which are, each, not-for-profit corporations, had violated federal law, the plaintiffs said the entities had violated New York's Minimum Wage Act.

Judge Sotomayor held a bench trial in the case last April at which she heard from some of the homeless workers, several GCP officials and several expert witnesses.

In her ruling, Judge Sotomayor agreed with the homeless across the board. As for the FLSA contentions, Judge Sotomayor not only found that homeless people were employees entitled to minimum wages (which had risen to \$4.25 per hour by 1994), she said that the GCP entities fell within the law's requirement that a covered defendant be an enterprise with a common business purpose engaged in interstate commerce.

In support of the latter conclusion, the judge noted that each of the GCP entities had earned revenue well in excess of \$500,000 for each year in question and that by supplying items to the workers, such as radios, brooms and shovels, the defendants had handled goods that moved in interstate commerce. Turning to the claims under the New York wage law, Judge Sotomayor said that the GCP entities had exercised the requisite control over the homeless to qualify as their employers through selecting which persons could participate in the PTE and by dismissing anyone found under the influence of drugs or alcohol.

The judge referred the case to a magistrate judge for an inquest to determine the damages to be paid to each plaintiff.

Mitchell A. Lowenthal, Martha A. Lees, Yves P. Denize and Jennifer L. Kroman of Cleary, Gottlieb, Steen & Hamilton represented the plaintiffs. Molly S. Boast, Kenneth Moltner, Helen Marie Sweeney and Tracey Tiska of Leboeuf, Lamb, Greene & MacRae represented the GCP entities.

N.Y.L.J.
3-20-98

Exploitation Found In Jobs for Homeless

*Judge Scores Low Pay
By Grand Central Unit*

BY BILL ALDEN

IN A SHARPLY worded opinion, a Manhattan federal judge yesterday sided with 40 homeless people who charged that the Grand Central Partnership (GCP) illegally exploited them by paying them sub-minimum wages for their participation in one of the group's work programs.

The suit had challenged the Pathways to Employment (PTE) program under which GCP, through its related entity the Grand Central Partnership Social Services Corp. (SSC), put homeless people to work in several jobs, including clerical and security posts, at wages of about \$1.20 per hour.

Ruling in *Archie v. Grand Central Partnership Inc.*, 95 Civ. 0694, Southern District Judge Sonia Sotomayor rejected the GCP's claims that the homeless people were "trainees" and not workers for the purposes of the Federal Labor Standards Act (FLSA).

"The plaintiffs have presented voluminous evidence that they performed productive work for the defendants, expected to be paid by the defendants, and produced more benefits than they received through training



Judge Sotomayor

provided by the PTE," wrote Judge Sotomayor in her 81-page decision.

"Considering all the factors — including the ... expectation of compensation and immediate advantage to the employer — the economic reality is that the PTE participants benefited from the defendant's efforts, but the defendants benefited more."

Adding that the homeless people had "satisfied each of the factors to prove that they were employees ... as that term is understood in case law," Judge Sotomayor concluded that the defendants could not escape their obligations to pay minimum

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... said.

My Times 3/20

Two Business Districts Violated Minimum Wage Law, Judge Says

By BRUCE LAMBERT

A Federal judge has ruled that two major business improvement districts in midtown Manhattan violated minimum wage laws by paying homeless people whom they recruited to work in custodial, security, office and laundry jobs \$1 to \$1.50 an hour.

Although the employees were not in the workfare program, advocates for the homeless who sponsored the suit said the decision set a precedent that could be applied to workfare programs, to insure the minimum wage for welfare recipients who are required to take public service jobs. New York City says its workfare program already complies with the minimum wage.

The judge, Sonia Sotomayor of the Federal District Court for the Southern District, ruled Wednesday that the workers hired by the improvement districts are entitled to back pay and overtime at time-and-a-half for work beyond 40 hours a week. Some of the homeless people worked as many as 81 hours a week and a total of up to 1,500 hours. They received stipends of up to \$1.50 an hour when the minimum wage was \$4.25.

Lawyers for the two business improvement districts — the Grand Central Partnership and its sister organization, the 34th Street Partnership — are appealing the decision. They contend that the workers were participants in a social service program, called Pathways to Employment, that they were trainees and that they were not covered by state and Federal minimum wage and overtime laws.

But Judge Sotomayor found that

there was limited training for the homeless, that their assignments were called jobs and that many were kept on the \$1-an-hour trainee stipends indefinitely without ever graduating to full-pay status. She also found that the workers were used interchangeably with regular paid staff members and helped fill staff shortages. One worker even filled in for an absent supervisor, she noted.

Further, she concluded that the two districts used the cheap labor in the program to undercut competing service companies to win contracts to provide security guards. The contracts, she said, yielded big profits and contributed to the hefty executive salaries paid to district officials.

Such contracts brought in nearly \$1 million a year. The court decision noted that Daniel Biederman, the president of the two improvement districts and of the Bryant Park Restoration district, was making \$335,000 at the time.

One former worker, Felicia Hart, 39, who estimated she put in up to 2,000 hours at \$1 an hour, said she was delighted with the ruling. "I love it, I just love it," she said. "It's a victory not just for us but the future. It shows they just can't use people like that."

Forty workers were named in the minimum-wage suit, but the advocates said that as many as 150 could be entitled to compensation of up to thousands of dollars apiece. The judge referred the case to a magistrate to determine those amounts and to determine the legal expenses to be paid to the advocates and their pro bono law firm, Cleary, Gottlieb, Stein & Hamilton.